

Federal Communications Commission

DA 03-1013

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-87
Table of Allotments,)	RM-10686
FM Broadcast Stations.)	
(Pearsall and Dilley, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 2, 2003

Released April 4, 2003

Comment Date: May 27, 2003

Reply Comment Date: June 10, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Pearsall RadioWorks, Ltd. ("Petitioner"), licensee of Station KVWG-FM, Channel 237A, Pearsall, Texas, proposing the reallocation of Channel 237A from Pearsall to Dilley, Texas, and the modification of Station KVWG-FM's license accordingly. Petitioner also requests the allotment of Channel 227A at Pearsall, Texas, as a replacement service. Petitioner states its intention to apply for the respective channels, if allotted.

2. This proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Petitioner states that the reallocation would allow Station KVWG-FM to substantially expand its service area and population. Specifically, the reallocation of Channel 237A to Dilley would provide the community with a second local service and a first competitive service?

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*² by providing Dilley (population 3,674)⁴ with potentially its third local FM transmission service. The reallocation of Channel 237A to Dilley would not deprive Pearsall (population 7,157) of its sole local transmission service since Station KMFR and AM Station KVWG would remain licensed to Pearsall and Channel 227A is proposed

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² Channel 264A has been allotted to Dilley and is awaiting auction.

³ See 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ All population figures are taken from the 2000 U.S. Census.

herein as a replacement service. Since petitioner intends to change its transmitter site, a gain and loss area study is required. Moreover, the reallocation would not result in a move in or near an urbanized area, and a Tuck analysis is not necessary.⁵

4. We believe the proposal wants consideration since the reallocation of Channel 237A at Dilley, Texas, would enable Station KVWF-FM to expand its service area. In addition, the allotment of Channel 227A at Pearsall, Texas, would eventually provide a replacement service. We require specific comment concerning the public interest benefit of reallocating a channel in order to provide a third local service to a significantly smaller community. An engineering analysis has determined that Channel 237A can be reallocated to Dilley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) east at petitioner's requested site.⁶ Also, Channel **227A** can be allotted to Pearsall with a site restriction of 1.7 kilometers (1.1 miles) west at petitioner's requested site? Since Dilley and Pearsall are located within 320 kilometers (199 miles) of the U.S-Mexican border, concurrence of the Mexican government has been requested. In compliance with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KVWG-FM without entertaining competing expressions of interest in the use of Channel 237A at Dilley, Texas.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel No.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Pearsall, Texas	237A, 281C1	227A, 281C1
Dilley, Texas	255C1, 264A	229A ⁸ , 237A, 255C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 27, 2003, and reply comments on or before June 10, 2003, and are advised to read the Appendix for the proper procedures. Comments should

⁵ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Turk* 3 FCC Rcd 5374 (1988).

⁶ The coordinates for Channel 237A at Dilley are 28-39-55 North Latitude and 99-08-35 West Longitude.

⁷ The coordinates for Channel 227A at Pearsall are 28-53-13 North Latitude and 99-06-40 West Longitude.

⁸ On January 29, 2003, a Notice of *Proposed Rule Making* was adopted proposing the substitution of Channel 229A for vacant Channel 264A at Dilley, Texas, which is pending. See 18 FCC Rcd 1023 (2003).

be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Harry C. Martin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do to apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules?

9. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no **ex parte** presentations ~~are~~ permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. **An ex parte** presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an **ex parte** presentation and shall not be considered in the proceeding. Any reply comment that has not ~~been~~ served on the person(s) who filed the comment to which the reply is directed, constitutes an **ex parte** presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁹ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, **as** amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, **as** set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions **are** presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, **if** authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered **as** comments in the proceeding, and Public Notice to this effect will be given **as long as** they **are** filed before the date for filing initial comments herein. If they **are** tiled later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.